

**REMARKS**

Claims 1-21 and 25-33 are pending in the application.

**Response to Restriction Requirement**

In response to the Restriction Requirement mailed February 24, 2006, Applicants hereby elect the invention of claims 9-21 and 31-33.

Further, Applicants hereby traverse the restriction requirement for the following reasons.

**1. The Restriction Requirement is Incomplete**

The Restriction Requirement states at the bottom of Page 2 that "The inventions are distinct, each from the other because of the following reasons: . . ."

The Restriction Requirement continues on Page 3, with two form paragraphs that each state that the inventions are "independent or distinct for the reasons given above. . ." when no reasons have been given by the Examiner. The Examiner has failed to point out how the inventions require a different field of search or how they have acquired separate status in the art because of divergent subject matter.

Further, the separation of the claims into the groups identified by the Examiner makes little sense since the subject matter of claims 31-33 might be considered more similar to claims 1-8 than to claims 9-21. Additionally, it is noted that the retainer is located at or near the closed end of the pouch, not "for attachment to the open end" as is asserted in the Restriction Requirement. Accordingly, because the

Restriction Requirement is incomplete and inaccurate, it is improper and should be withdrawn.

## **2. The Restriction Requirement Fails to Demonstrate a Serious Search Burden on the Examiner**

According to MPEP 803, if the search and examination of all the claims in the application can be made without serious burden, the examiner **must** examine them on the merits even though they include claims to independent or distinct inventions. A serious burden on the examiner must be shown in the Restriction Requirement by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02.

No such showing has been made in the Restriction Requirement of February 24, 2006, with respect to Claim Groups I and II. The Restriction Requirement does not demonstrate separate classification, or separate status in the art, or a different field search as defined in MPEP § 808.02, to justify restriction of the claims. The Office Action itself clearly states that all of the claims are directed to inventions classified in a single subclass, namely, class 128, subclass 830. Thus, no showing of separate classification, separate status in the art, or a different field of search has been demonstrated, as required by MPEP 803.

Additionally, a search of USPTO records for subclass 128/830 was conducted on March 23, 2006, using the USPTO website. This search showed that there are currently 135 US Patents and 28 US Patent Publications classified in subclass

128/830. Thus, it is difficult to understand how searching a subclass with only 163 patent documents classified therein can constitute a “serious search burden” on the Examiner.

Further, while the Office Action cites MPEP 806.05(c) for supporting the restriction requirement, as showing distinct inventions, the Office Action ignores the first requirement of MPEP 806.05(c), namely, that “To support a requirement for restriction between combination and subcombination inventions, **both** two-way distinctness **and** reasons for insisting on restriction are necessary, i.e., **there would be a serious search burden as evidenced by separate classification, status, or field of search**” (MPEP 806.05(c) emphasis added). Thus, while the Restriction Requirement states that the inventions are independent and distinct, the Office Action fails to show how this is a serious search burden. Accordingly, the claims currently pending in the application all demonstrate a suitable unity of invention for examination, and the requirement for restriction to is traversed.

Additionally, all the claims are believed to be allowable, as the prior art does not teach a female condom that is able to extend from a contracted state during insertion of the penis, and then spring back to the contracted state during withdrawal of the penis.


Appl. No. 10/664,861  
Response to Restriction Requirement  
Reply to Office Action of February 24, 2006

Docket No. AVR-100

**Conclusion**

In view of the foregoing Remarks, Applicant respectfully requests timely examination of all the pending claims in this case and issuance of a Notice of Allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Colin D. Barnitz', with a stylized, cursive script.

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